

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. (F)-113 of 2015
Date of Decision: 30.07.2015**

Chameli and another

...Appellants

vs.

Seema and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued by: Mr. D. C. Dhoola, Advocate for the appellants.
Mr. Sunny Bhardwaj, Advocate for the respondents.**

Raj Rahul Garg, J.

Chameli aged 60 years and Ramphal aged 64 years, grandparents of Muskan, sought the custody of Muskan, aged about 3 years, daughter of their son Sanjay invoking the provision of Section 6 of Hindu Minority and Guardianship Act, 1956. They filed the petition against their daughter-in-law Seema-respondent No. 1 and her mother Parmeshwari wife of Mange Ram, respondent No. 2. As per petitioners, Sanjay was married to respondent No. 1. Out of this wedlock, Muskan was born to them. Sanjay died on 25.03.2010. After the death of Sanjay, respondent No. 1 took Muskan to her parental home. She solemnized second marriage with Jitender son of Naresh Kumar on 24.11.2012. Jitender was married and having two

children from his previous wife. As per petitioners, respondent No. 1 has left Muskan with her mother respondent No. 2.

It is further the case of petitioners that respondent No. 2 is having no source of income. Brothers of respondent No. 1 are drunkard. There is none in the parental family of respondent No. 1 to look after the minor child. Respondent No. 2 remains ill. In such atmosphere, no education could be provided to the minor whereas petitioner No. 2 is retired as Field Officer from Haryana Harijan Kalyan Nigam. She can provide better education to the minor child and the atmosphere of their house is also good.

On the other hand, it is the case of respondents that petitioners were having two sons. Their son Surender was married with Sita, who filed civil litigation against the petitioners and her husband. Petitioners are old aged people and living separately from their son and having no source of income. The atmosphere in their house is tense. When respondent No. 1 left her matrimonial home, petitioners never tried to bring her back to her matrimonial home. Rather they flatly refused to keep her with them. Finding no alternative, she had to get married for the second time. At the time of marriage, it was mutually agreed that Muskan shall live with her. She has been living with respondent No. 1. Jitender is a qualified person and employed as a Teacher in a well reputed school. Respondent No. 2 has no concern with the matter as Muskan has been living happily with her mother. With these pleas, dismissal of the petition with costs was prayed.

Pleadings of the parties gave rise to the following points:

1. Whether the petitioner is entitled to get the custody of minor Muskan, on the grounds as alleged? OPP
2. Whether the petition is not maintainable in the present

form? OPR

3. Whether the petitioner has no cause of action and locus standi to file the present petition? OPR

4. Whether the petitioners are estopped by their act and conduct from filing the present petition? OPR

5. Whether the petitioners have not come to the court with clean hands? OPR

6. Relief.

After taking evidence of both the sides and hearing both the counsel for the parties, the learned trial court dismissed the petition observing that the welfare of minor child lies with the respondents that petitioners. Hence, petitioners are not entitled to the custody of minor child.

Aggrieved by the aforesaid judgment of the learned trial court, the grand parents came up in appeal before this Court with the grouse that they being grand parents can better look after the interest of the minor. The welfare of the minor lies with them as respondent No. 1 Seema has got married for the second time to a person who has two children from his erstwhile wife. As such, welfare of the minor lies with them.

We have heard Mr. D. C. Dhaula, Advocate for the appellants and Mr. Sunny Bhardwaj, Advocate for the respondents besides appraising the entire material coming on record. There is no dispute about the fact that the appellants are grandparents of the minor Muskan. The facts of the case regarding relationship of the parties *inter se* as well regarding minor Muskan, are not disputed. It is also not disputed that respondent No. 1 Seema got married to Jitender for the second time and Jitender has two children from his erstwhile wife.

It is the settled proposition of law that the welfare of minor is the paramount consideration in custody cases. The petition was originally filed on 18.04.2013. At that time minor was of the age of 3 years. She is presently in the custody of her mother Seema. Her father Sanjay is no more. The child has been living with her mother right from the very beginning. She has already lost the love and affection of her father. It cannot be said to be in the interest of minor to deprive her of the love and affection of her mother. Not only this, as her mother has got married for the second time, in the absence of any evidence or proof on the file, it cannot be said that the minor child Muskan was not getting the love of father as well. She must have also been getting love and affection of both the parents.

Of course, appellants are the grandparents of Muskan but the minor daughter has been living away from them since long. She must not be even recognizing them as her grandparents. Above all, Ramphal, grandfather, appeared as PW-2 and deposed, as mentioned in the judgment of trial court, that he never visited village Baliyali for meeting the minor child. Even PW-1 Chameli, grandmother, deposed, as mentioned in the judgment of trial court, that her husband Ramphal has been suffering from Paralysis and is aged about 65 years. She also admitted that she is an illiterate lady. With this evidence on record, when the grandparents are of advanced age; grandfather is paralytic and grandmother is an illiterate lady; from any angle, welfare of minor Muskan cannot be said to be with petitioners-grandparents and also there is not even an iota of evidence, available on record, to show that as to in what manner the interest of minor Muskan are not better looked after by her mother Seema inspite of the fact that she has got married for the second time. In fact, law does not prohibit

the custody of minor child to a mother or a father who got married for the second time.

Minor Muskan is growing in age. She has to be admitted in school and might even has started going to school. The grandparents under afore-discussed conditions/circumstances would not be able to even cope with the minor child. In such like circumstances, this court even feels that the minor child would be an additional liability on the appellants. As such we find no illegality in the impugned judgment, recorded by the learned trial court and thus the same is affirmed.

No other point was urged before us.

Finding no merit in this appeal, maintaining the impugned judgment dated 10.09.2014, this appeal is ordered to be dismissed.

Decree-sheet be prepared, accordingly.

(M. Jeyapaul)
Judge

(Raj Rahul Garg)
Judge

30.07.2015
Waseem